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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,134	12/18/2001	Steven Ausnit	ITW-13115	4729
44702	7590	07/08/2004	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			MEREK, JOSEPH C	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,134

Applicant(s)

AUSNIT, STEVEN

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/7/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 7,9,10 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7,9,10 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “stomped portions” and “the membrane having first and second end portions respectively blending into the first and second stomped portions” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek et al in view of Ausnit (US 4,892,414). Regarding claim 7, Machacek et al teaches a zipper bag with a slider where the slider does not have a separating finger but does not teach the membrane of a gauge thin enough to be captured between the male and female members when the zipper is closed and does not teach the membrane being connected to extending from one of the profiled members. Ausnit '414, as seen in Figs. 2-4, 6, and 7, teaches a membrane that is thin enough to be interengageable between the male and female profiles. It would have been obvious to employ the membrane of Ausnit '414 in the bag of Machacek et al to provide for a liquid tight seal of Ausnit '414. See Figs. 9-11 of Machacek where the profile members are of the same type as Ausnit. As seen in Figs. 2-4 and 6 of Ausnit '414 where the membrane is connected to one of the profiled members. See Figs. 6 and 9-11 of Machacek et al, where the modified receptacle of Machacek et al has a mouth at an upper end with a closed plastic zipper 10 attached to the mouth, and a slider 42 is mounted to the zipper, where 114 and 112 are the first and second interlocked profile structures having

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an interstice therebetween, the slider does not have a separating finger for separating the first and second profiled structures. See Figs. 2-8 of Ausnit '414, where the pliable membrane is secured to the first interlocked structure and part of the membrane being located in and having a profile conformed to the interstice. The modified receptacle of Machacek et al has an interstice that will receive the membrane as seen in Fig. 7 of Ausnit '414. Regarding claim 9, see Col. 3, lines 40 and 41 and Fig. 2 of Machacek et al, where the bag 86 is sealable to the base extensions or flanges 114 and 112 and the flanges or extensions are secured to the profiled structures. The bag walls are secured to the flanges as claimed. Regarding claim 10, see Machacek et al, Col. 3, lines 22-25, and Figs. 9-11, where the first profile structure 112 has a male profile and the second profile structure 114 has a female profile.

Claims 19- 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek et al in view of Ausnit as applied to claim 7 above, and further in view of Buchman (US 6,273,607). Regarding claim 19, the modified device of Machacek does not teach the stomped ends of the profiled members or the membrane blending into the stomped ends. Buchman as seen in Fig. 1 and Col. 3, lines 17-27, teaches crushed or stomped ends on the profiled members. It would have been obvious to employ the stomped ends of Buchman in the modified bag of Machacek to prevent the slider from sliding off the edges of the bag as taught by Buchman. As seen in Col. 3, lines 20-30 of Ausnit '414, the modified bag of Machacek teaches that the membrane is coextensive with throughout the length of the zipper. It would have been obvious to blend the membrane into the stomped ends since the membrane extends the entire length of the

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zipper and to insure that the liquid tight seal runs the entire length of the zipper.

Regarding claim 20, see Fig. 4 of Ausnit where the free edge of the membrane is disposed on the product side of the zipper. Regarding claim 21, the modified bag of Machacek does not specifically show that the membrane extends from the grooved profiled member and into the product side of the zipper. It would have been obvious to one of ordinary skill in the art to locate the membrane on either profiled member as the modified bag of Machacek teaches that there can be membranes on both profiles.

Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek et al in view of Ausnit (US 4,892,414) and further in view of Buchman (US 6,273,607). Regarding claim 22, Machacek et al teaches a zipper bag with a slider where the slider does not have a separating finger but does not teach the membrane of a gauge thin enough to be captured between the male and female members when the zipper is closed and does not teach the membrane being connected to extending from one of the profiled members. Ausnit '414, as seen in Figs. 2-4, 6, and 7, teaches a membrane that is thin enough to be interengageable between the male and female profiles. It would have been obvious to employ the membrane of Ausnit in the bag of Machacek et al to provide for a liquid tight seal of Ausnit '414. See Figs. 9-11 of Machacek where the profile members are of the same type as Ausnit. As seen in Figs. 2-4 and 6 of Ausnit '414 where the membrane is connected to one of the profiled members. The modified device of Machacek does not teach the stomped ends of the profiled members or the membrane blending into the stomped ends. Buchman as seen in Fig. 1 and Col. 3, lines 17-27, teaches crushed or stomped ends on the profiled

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members. It would have been obvious to employ the stomped ends of Buchman in the modified bag of Machacek to prevent the slider from sliding off the edges of the bag as taught by Buchman. Regarding claim 23, see Fig. 4 of Ausnit where the free edge is on the product side. Regarding claim 24, the modified bag of Machacek does not specifically show that the membrane extends from the grooved profiled member and into the product side of the zipper. It would have been obvious to one of ordinary skill in the art to locate the membrane on either profiled member as the modified bag of Machacek teaches that there can be membranes on both profiles. Regarding claim 25, see Fig. 4 of Ausnit where the modified bag of Machacek has flanges on the profiled member where the flanges are connected to the bag walls. Regarding claim 26, see Figs. 9-11 of Machacek where one of the profiled members is male and the other is female.

Response to Arguments

Applicant's arguments filed 9/29/03 have been fully considered but they are not persuasive. The reason that Ausnit has the membrane in between the profiles is to provide a seal as taught by Ausnit. Machacek et al as seen in Figs. 9-11 shows profile members of the type that are shown in the Ausnit reference. It would have been obvious to employ the sealing member of Ausnit in the device of Machacek to seal the profiles that are the same as Ausnit. The membrane of Ausnit is designed to work with the profiled members and is thin enough to work with the zipper of Machacek et al.

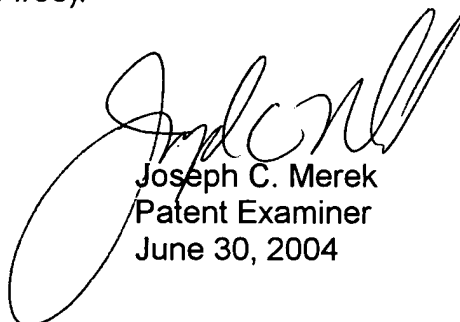
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ausnit (US 20020154837A1) is cited for its structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Patent Examiner
June 30, 2004